



February 3, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-0393

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#131849.

The Texas Department of Criminal Justice (the "department") received a request for all documents and other information reviewed by the department's Director's Review Committee in connection with its decision not to take an inmate's spouse off of a negative correspondence list.¹ You claim that the requested information is excepted from disclosure under sections 552.107 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹This ruling does not reach the requestor's argument that the department must identify a legitimate penological interest to continue to deny the non-inmate spouse's constitutional right to communicate with her husband or to withhold the information requested. *See Thornburgh v. Abbott*, 490 U.S. 401 (1989) (holding that a department's correspondence regulations must be "reasonably related to legitimate penological interests."). Rather, we believe that this issue is one for a court of proper jurisdiction.

²The requestor argues that the department did not seek an open records decision from this office within the statutory ten-day period, *see* Gov't Code § 552.301, and, therefore, that the requested information is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). Our records show that the department received the requestor's written request for information on November 12, 1999. Due to the Thanksgiving holiday, the department's ten business days did not expire until November 30, 1999. Our records show that the department's request for a decision was transmitted by facsimile to our office on November 30, 1999. Therefore, we conclude that the department timely met its ten-day deadline for requesting a decision from this office. The requestor also argues that the department failed to timely provide him with the information specified in section 552.301(d). Section 552.301(d) requires that a governmental body must provide to the requestor within ten business days after the date of receiving the requestor's request:

- (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

Section 552.131(a) relating to department inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.131 is explicitly made subject to section 552.029. Section 552.029 provides for required public access to certain specified information about an inmate confined in a facility operated by or under a contract with the department. We find that section 552.029 does not required the disclosure of the requested information. Therefore, you may withhold the requested information under section 552.131. Because we are able to make a determination under section 552.131, we need not address your claim under section 552.107 of the Government Code.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

(2) a copy of the governmental body's written communication to the attorney general asking for a decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

This office interprets section 552.301(d) to mean that a governmental body substantially complies with subsection (d) by sending the requestor a copy of the governmental body's written communication to the attorney general requesting a decision. In this instance, the department's request for an attorney general decision, transmitted to our office on November 30, 1999, indicates that it was "copied" to the requestor. Whether the department did, in fact, send the requestor a copy of its request for an attorney general decision is a question of fact. However, we cannot resolve disputes of fact in the opinion process. See Open Records Decision Nos. 592 (1991), 552 (1990), 435 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. See Open Records Decision No. 552 (1990). Therefore, we conclude that the department has substantially complied with section 552.301(d).

³This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

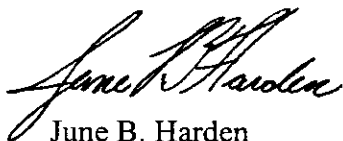
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/KSK/ljp

Ref: ID#131849

Encl. Submitted documents

cc: Mr. Joseph J. Soliz
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(w/o enclosures)